

**Entity Formation Checklist**

**Name of Person Filling out This Form:**

\_\_\_\_\_

**How Did You Find Out About This Firm?**

- Referral From \_\_\_\_\_
- Word of Mouth
- Yelp
- Online Search
- Other: \_\_\_\_\_

**Have You Watched Our Online YouTube Video on Whether Your Business Needs to be in an Entity?**

[http://www.youtube.com/watch?v=cnNH\\_0HHqbM](http://www.youtube.com/watch?v=cnNH_0HHqbM)



- Yes
- No

**Have You Watched Our Online YouTube Video on Whether Your Business Should be in an LLC?**

<http://www.youtube.com/watch?v=sp63o89nEw8>



- Yes
- No

## **FORMATION ACKNOWLEDGMENTS**

### **Some things you should know before you form your entity:**

By forming an entity in California, it will create an additional amount of overhead for your business. The following is a list of possible additional expenses you may incur just by forming an entity in California, or any other state:

1. Your entity may require its own tax return.
2. **Your entity will need to register for a business license in the city in which it's located, does business from, or does business in. Please consult with your CPA/accountant to be in compliance with this requirement.**
3. **Entities in California are required to pay a minimum \$800 per year, regardless of its revenue levels. This amount is not included in your flat fee with us and will need to be paid separately; please consult with your tax preparer. This \$800 is due, even in the entity's first year of business. For example, if you form your LLC in November, and don't even conduct business, you will have \$800 due for the year you formed the LLC, as well as for the following year.**
4. Your entity may require a payroll service, even if you're the only owner.
5. Your entity, if a corporation, will need to prepare and file in its corporate records binder a set of annual minutes or consents, which are typically drawn up by an attorney but may be DIY'ed if you want.
6. Your entity, in California, will be required to file a Statement of Information, annually for corporations, bi-annually for LLCs. Most states require some kind of annual reporting.
7. If this is an ongoing business, you will need to assign/transfer all contracts and open transactions to the entity if you want the entity to provide its personal liability protections and tax advantages, if any.
8. Your entity will require its own new bank account.
9. If the business operates from a rented space, that lease will need to be transferred to the entity (and you will likely be asked to provide a personal guarantee).
10. Unless the entity you form is a single-member LLC, then it's going to require its own tax return (CPA/Accounting fees).
11. If your entity is performing certain professional services (e.g., lawyer), it will need to comply with the governing body's corporate/entity requirements and may require you file certain paperwork with the government entity to register the entity. We do not typically provide that service since our clients are usually better positioned to fill out the forms. Such government entity may also charge a filing fee and an annual fee, as well as requiring an annual report.

Those are most of the items you'll need to consider before you move forward with the formation. If you have any other questions, please give us a call. Or you can also take a look at the helpful FAQs on our website: <https://www.davidherzoglegal.com/faqs/>

**BASIC INFORMATION ABOUT THE ENTITY**

**Entity Type You Want/Are Considering:**

- Corporation (same as C Corporation)
- S Corporation
- Limited Liability Company
- Professional Corporation
- Limited Partnership
- Limited Liability Partnership
- General Partnership
- Other, describe: \_\_\_\_\_  
\_\_\_\_\_

**What state are you proposing registering your entity in?**

- California
- Delaware
- Nevada
- Other: \_\_\_\_\_

**Proposed Names for the Entity**

If it's an LLC, it *must* have "LLC" or "Limited Liability Company" attached to it; if it's a corporation in California, it can have "Inc." or "Incorporated", etc., but does not have to. If it's a professional corporation, you should check your governing agency's website to see if it has name requirements. In any event, the name is not required to have a comma in it. For example, "123 Main Street Properties Inc." is acceptable and usually preferred, instead of 123 Main Street Properties, Inc. (with the comma). List the names in order of preference.

**Please make sure you use the exact name, including if you want it Upper Initial Caps (recommended) or ALL CAPS (not recommended, but allowed)**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Will the Entity do business in a trade name that is different from the Entity name? (For example, if the business is an LLC, and ends in "LLC", will you be dropping the "LLC" in your day-to-day business use, or using an entirely different name?)**

- Yes
- No
- To be discussed

**DELAWARE ENTITIES**

**Do you want your entity to be formed in Delaware?**

- Yes
- No
- To be discussed

**If filing in Delaware:**

Will you have employees or independent contractors in Delaware?

- Yes
- No
- To be discussed

Have you already chosen an agent for service of process in Delaware? We cannot provide that service for you in Delaware.

- Yes, have chosen.
  - If chosen, please provide name and street address: \_\_\_\_\_
- No, have not.
- To be discussed
- Need a referral to one

**BUSINESS HISTORY**

**Is this a new business?**

- Yes
- No
- To be discussed

**If you checked “No”, then is this business being started with assets from another company, or a company you co-owned with someone else?**

- Yes, assets are from another company
- Yes, assets are from a company I owned with someone else
- No
- To be discussed

**If this is a preexisting business, or you are transferring assets/client lists from a preexisting business (or businesses) to put into this new entity, please provide a list of the material assets (including any trademarks or other IP), along with their current fair market value. Include a list of liabilities as well.**

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**ACCOUNTING**

**For your new business, please describe the cash and assets you will be contributing, or lending, to the new business. Typical fund sources are capital contributions or loans. Please double check with your accountant/tax advisor to determine what makes sense for you in your situation.**

- CAPITAL CONTRIBUTION: The incorporator(s)/founder(s) is/are contributing the following cash and assets to the business as our/their initial investment (list the individual and describe the nature of the contribution):

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- LOAN: Cash is being loaned to the business which will be paid back over time.
  - o The loan is being made by:
    - Me \_\_\_\_ (check if applicable)
    - Someone else: \_\_\_\_\_

**Do you expect to take on additional partners or investors following your formation? Please describe:**

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**Number of employees expected in the next 12 months, indicate part time or full time, and the dates that such employees are expected to start (approximate ok):**

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**BUSINESS BACKGROUND**

**Describe the principal activity of the business:**

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**Does the activity of the business require a professional license or trade certification? In California, this generally means a license issue pursuant to a section in the California Business and Professions Code. If so, please describe.**

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**What do you expect the annual gross revenue to be over the next few years, per year?**

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**Will the sales of your goods or services be . . . . ?**

- Brick and Mortar/Face-to-Face
- Online
- Both
- Wholesale
- Direct Sales
- Auction House
- Retail
- Other/To be discussed

**If wholesale, do you own or take title to the goods that you sell?**

- Yes
- No

**REAL ESTATE ACTIVITY**

**If the activity involves real estate, please describe in detail the real estate activities and the type(s) of real estate that may be involved. For example, your entity . . . :**

- Rents or leases property that it owns.
  - Uses capital to build property.
  - Sells property for others.
  - Manage real estate for others.
  - Will buy, improve, and sell real estate (aka "flip")
  - Construction
    - Focus on a single construction trade (please specify)? \_\_\_\_\_
    - New Residential properties? \_\_\_\_\_
    - Remodeling? \_\_\_\_\_
    - Commercial? Please specify type: \_\_\_\_\_
    - Construct other types of structures: \_\_\_\_\_
  - Other - please specify:
- 

**If you buy or sell real estate for others, which license do you have (California)?**

- Salesperson
- Broker

**Will any real estate need to be transferred to the entity?**

- Yes
- No
- To be discussed

**ADDRESSES**

**Street Address of Principal Executive Office of the Business**

**(Cannot be a PO Box (i.e., USPS), but can be a private mailing service, like UPS or Mailboxes Etc.):**

(Note: this address will be public record, we recommend that you do not use your home address).

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**California Office Where Business Records Are Maintained**

**(Cannot be a PO Box, but can be a private mailing service, like UPS Store or Mailboxes Etc.):**

(Note: this address will be public record, we recommend that you do not use your home address).

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**Mailing Address for the Business**

**(Can Be a PO Box):**

(Note: this address will be public record, we recommend that you do not use your home address)

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**Fax Number for Business (or principal) (optional):**

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**Phone Number for the Business (or principal):**

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**Your Business Email Address (not a public record):**

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**At the end of our engagement, we will send you your Corporate/Company Records Book containing your business's official records (hardback, dimensions 9x12). Would you like this sent to the business's mailing address above or to some other address (please specify if a different address)?:**

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**Is this address business or residential?**

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**May we send the records book "no signature required"?**

- Yes
- No, someone needs to sign for it

**OWNERSHIP**

**Owners/percentage owned by each member/partner/shareholder/owner:**

- \_\_\_\_\_ / \_\_\_\_\_ %
- \_\_\_\_\_
- \_\_\_\_\_ / \_\_\_\_\_ %
- \_\_\_\_\_
- \_\_\_\_\_ / \_\_\_\_\_ %

**Will ownership of the business be by a married couple or registered domestic partnership?**

- Yes, married couple
- Yes, registered domestic partnership
- Unmarried individual(s)
- Combination of married couples (or RDPs) and unmarried individuals

**For each *married/RDP* owner, indicate:**

Married Owner #1:

- Yes, my ownership is community property with my spouse.
- No, my ownership is my separate property.

Married Owner #2:

- Yes, my ownership is community property with my spouse.
- No, my ownership is my separate property.

Married Owner #3

- Yes, my ownership is community property with my spouse.
- No, my ownership is my separate property.

**TAX TREATMENT OF YOUR LLC:**

When the LLC has one owner, the LLC can be taxed as a sole proprietorship, a corporation, or an S corporation. When the LLC has multiple owners, an LLC can be taxed as a partnership, a corporation, or an S corporation. When the owners of an LLC are a married couple, then under applicable state law, you may choose to have your LLC be taxed as a single-member LLC (where spouses are treated as one person for tax purposes, in California), a partnership (spouses treated as two people), a corporation or an S corporation. Usually, especially in California under community property laws, married couples choose to be taxed as a single-member LLC. But you may have particular reasons to treat for the LLC as something else.

**How would you like your LLC to be taxed?**

- Taxed as a single-member LLC
- Taxed as a partnership
- Taxed as a C Corporation
- Taxed as an S Corp

**Please describe how shares/interests will be held (e.g., individually, in a trust, by another entity):**

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**If owners will hold shares/interests in trust, or in an entity, please provide the name of the trust or the entity. (For example, if it's a trust, then your answer should look something like this: John Doe, Trustee, the John Doe Revocable Living Trust UDT\* Dated January 1, 2019):** \_\_\_\_\_

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\* Means Under Declaration of Trust (UDT); use UTA if the document is a trust agreement.

## **LLC OPERATING AGREEMENT/CORPORATE BUY-SELL AGREEMENT**

### **Operating Agreements, Partnership Agreements, Buy-Sell Agreements**

Operating Agreements are for LLCs; Partnership Agreements are for partnerships; Buy-Sell Agreements are for Corporations. The flat fee for the entity formation does not include drafting any of these agreements, since those documents can be extensive and complex. However, having one for your entity can be critical to allow for the smooth operation and ownership transition (planned or not) of your partnership or corporation as time moves forward and situations change. That said, you are not required to have a written agreement by law. If you do not have one, state law will generally apply, unless your actions (performance) dictate otherwise . . . it's complicated.

### **Operating Agreements (LLCs), Specifically**

Though not required in writing, some banks do require you to provide them with a written operating agreement if you have formed an LLC, sometimes even where it's a single-member LLC. If you are required to have that or would like me to prepare a simple operating agreement which will define owner percentages and a few restrictions on manager actions, one can be provided for a flat fee as described in the Rate Sheet.

**Do you want us to prepare a simple Operating Agreement (LLC) you can use to open your bank account (if required by the bank)?**

- Yes
- No
- Need to discuss

### **Buy-Sell Agreements (Corporations), Specifically**

Would you like to discuss what's involved in our preparing a buy-sell agreement for the shareholders of your corporation?

- Yes
- No, not at this time

**S-CORP ELECTION:**

**Do you want your corporation (or LLC) to be taxed as an S Corporation?**

- Yes
- No
- To be discussed

**If electing S Corporation status, for each shareholder please provide a) the *exact* names and addresses that each individual taxpayer uses for his/her *personal* tax filing address; b) SSNs for all shareholders (this can be handled by phone call or text if you're not comfortable writing it here:**

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**ENTITY GOVERNANCE**

***If you are forming a CORPORATION:***

Directors: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Officers (CEO/President, CFO, and Secretary are required for a California corporation; officers of any position are optional for LLC) – If you only indicate CEO, we'll provide for the CEO to hold all officer positions unless you indicate otherwise. NOTE, where possible, the CEO and the Secretary should not be the same person.**

CEO: \_\_\_\_\_

President: \_\_\_\_\_

CFO: \_\_\_\_\_

Secretary: \_\_\_\_\_

VP (optional): \_\_\_\_\_

Other: \_\_\_\_\_

**ENTITY GOVERNANCE (continued)**

***If you are forming an LLC:***

**Who will the Manager(s) of the LLC be?**

***(Note, this is a critical decision, though it can always be changed later. If you expect at any time you may be bringing on investors or employees as owners, then we advise you not to check “All Members Manage”. “One Manager” is simplest and usually best (i.e., more efficient). “More than One Manager” may be appropriate in your circumstances. Certain licensing agencies require licensed individuals to be managers – please research first before choosing.):***

- One Manager (name): \_\_\_\_\_
- More than One Manager (names): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- All the Members will Manage (not recommended)

**You can also have your LLC “look like” a corporation, and have the LLC be managed by officers and directors. Do you want your LLC to have officers (like a CEO, for example)?**

- Yes, I want my LLC to have directors (names): \_\_\_\_\_  
\_\_\_\_\_
- Yes, I want my LLC to have officers (names):  
CEO: \_\_\_\_\_  
President: \_\_\_\_\_  
CFO: \_\_\_\_\_  
Secretary: \_\_\_\_\_  
VP (optional): \_\_\_\_\_  
Other: \_\_\_\_\_

**MISCELLANEOUS**

**Proposed Agent for service of process (required); this can be anyone (including you) over 18; he/she/they don't need to be "registered" in California; the agent just needs to have a street address:**

- David Herzog Legal (no charge)
- Other (provide name and street address in California):

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**Accounting year:**

- Calendar (typical)
- Fiscal: \_\_\_\_\_

**Signature Authority**

Who will have signature authority to withdraw funds or write checks from the company's bank account(s)?

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- To be discussed

**Accountant for the Business:**

**(include name, address, phone number, email)**

***We will not contact your accountant without your consent.***

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If you don't have one, please let me know if you need a referral to an accounting professional.

**TAX ID NUMBER (EIN)**

**Do you want us to process your Tax ID# (Federal EIN) Application:**

- Yes
- No
- To be discussed

**If yes, I will need the name (as used for that person’s personal tax return) and Social Security Number or Tax ID Number (Federal EIN) for the Applicant (usually the principal/owner, typically an individual, but if the principal owner is another entity, please provide that entity’s *exact* name and Tax ID Number (EIN)).**

**Please be sure that the name associated with the social security number is the exact same name used for filing that individual’s tax returns. Also, please be aware that the IRS no longer provides assistance or Tax ID #'s by phone, so a delay could occur with respect to obtaining the Tax ID Number. Such delay could take longer than 45 days.**

**Name:** \_\_\_\_\_

**SSN:** \_\_\_\_\_

**Have you (or someone on your behalf) used that Social Security Number before to file for a Tax ID # for any other business?**

- Yes
- No

**Have you obtained, or caused to be obtained, a Tax ID number in the past for an entity with the same or similar name to this entity?**

- Yes. If yes, what was the exact name? \_\_\_\_\_
- No
- To be discussed

**Will another entity (typically a parent company) be for the Tax ID number?**

- Yes
- No

**If you answered yes, was the Tax ID # for the responsible applicant obtained using the IRS’s online service?**

- Yes
- No
- Don’t Remember

### Turnaround For Filing

Some filings with the Secretary of State take several weeks, and we cannot account for furloughs or state budget crises which delay corporate filings in California. You will need your initial filing to open a bank account or to open payroll services. Even if you submit for a delayed filing (see below), you will not get your document back right away; if you want it back rushed, whether for a regular filing or a delayed filing, you'll need a rush. For an additional cost (usually around \$600), the Secretary of State will turn your formation in 24 hours. Do you want your formation turned around in 24 hours for this additional cost?

- Yes
- No

### Delayed Filing

If you are filing your entity toward the end of a calendar year, you may want to submit your formation paperwork now for a formation date effective as of the first of the following calendar year. This may help in postponing certain taxes and fees, **including the annual minimum Franchise Tax Board fee of \$800, due even in the first year of the entity, even if it doesn't do any business.** Some clients also prefer to have a start date that covers an entire calendar year to avoid having two tax returns for the same business in one year. If you delay the filing, this does not affect the rush service. If you delay, the time it takes to file your document is the same, and starts from the effective date of the filing, not the date of submittal.

Do you want to delay your filing until January 1<sup>st</sup> of next year? Or until some other date?

- Yes. Specify date if not January 1: \_\_\_\_\_
- No

## LLPs

**For LLPs in California (An LLP is a Limited Liability Partnership, NOT an LLC. LLPs are typically used for professional practices, like law firms. Please skip this page if you are not forming an LLC.):**

**Do you plan on forming your entity as an LLP?**

- Yes
- No
- Need to discuss

**If yes, please check one of the following activities in which the LLP is going to be engaged:**

- Architecture
- Engineering
- Land Surveying
- Law
- Public Accountancy
- Other

**For LLPs for the practice of law in California:**

**Do you want us to also prepare and file your State Bar Certification?**

- Yes
- No
- Need to discuss

**Please confirm that you have read and understand Corporations Code Section 16956.**

- Yes
- No
- Need to discuss

**For law firms: please be aware that the limitation of liability is not effective until the application to the State Bar has been approved, which may take weeks. The effective date, though, if approved, will be retroactive to the date of submission. The application cannot be submitted until the LLP-1 formation form has been filed with the Secretary of State, and the SOS has returned a certified copy of the LLP-1 so that it can be attached to the filing. There are also annual reporting requirements and fees for filings.**